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4 **UNITED STATES DISTRICT COURT**
5 **NORTHERN DISTRICT OF CALIFORNIA**
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7 **JOHN LEE,**

8 Plaintiff,

9 vs.

10 **DANIEL EVERETT**

11 Defendant.

CASE NO. 20-mc-[80031](#)-YGR

**ORDER REMANDING FOR LACK OF
JURISDICTION**

Re: Dkt. No. 2

12 The Court has received the Petition for Removal and Application to Proceed *in Forma*
13 *Pauperis*, both filed on February 7, 2020, by Daniel Everett. To the Petition for Removal, Everett
14 attached a copy of a “Request for Civil Harassment Restraining Orders” filed in the Superior
15 Court of California, County of San Francisco, by John F. Lee seeking protection from Daniel
16 Everett “SBN 154323.” In his petition for removal, Everett indicates that he “brings this action”
17 based on the 1964 civil Rights Act.”

18 The petition was directed to the undersigned based upon a pre-filing order issued August
19 14, 2013, by Judge Claudia Wilken in Northern District of California Case Nos. 13-cv-2706 and
20 13-cv-0628. (*See* copy of pre-filing order at Dkt. No. 1-2 herein.) That pre-filing order prohibited
21 defendant Daniel Everett from filing additional petitions for removal of Case No CUD 12-642905
22 from San Francisco Superior Court without establishing legitimate grounds for federal subject
23 matter jurisdiction.

24 The Court finds that the instant petition is not prohibited by that pre-filing order because it
25 is not, on its face, related to CUD 12-642905. While the petition herein does reference an eviction
26 from a commercial office space, it is not clear whether such eviction is the same unlawful detainer
27 matter as referenced in Judge Wilken’s

28 However, the instant petition does not establish legitimate grounds for federal subject

1 matter jurisdiction.

2 A defendant may remove an action from state court to federal court so long as the federal court
3 has original jurisdiction. 28 U.S.C. § 1441(a). Unlike state courts of general jurisdiction, federal
4 courts are courts of limited jurisdiction and have no power to consider claims for which they lack
5 subject matter jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).
6 *Wang v. FMC Corp.*, 975 F.2d 1412, 1415 (9th Cir. 1992), *overruled on other grounds by U.S. ex.*
7 *Rel. Hartpence v. Kinetic Concepts, Inc.*, 792 F.3d 1121 (9th Cir. 2015). Under 28 U.S.C. §
8 1915(e)(2)(B), the Court is required to dismiss an action that fails to state a claim upon which the
9 federal court may grant relief, including one in which the court lacks subject matter jurisdiction.
10 Further, a case removed to federal court must be remanded back to state court “if at any time before
11 final judgment it appears that the district court lacks subject matter jurisdiction,” 28 U.S.C. § 1447(c).
12 The removing defendant “bears the burden of establishing that removal is proper” and the “removal
13 statute is strictly construed against removal jurisdiction.” *Provincial Gov’t of Marinduque v. Placer*
14 *Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009).

15 Here, the Court is without jurisdiction over the underlying state civil harassment
16 restraining order action. Defendant Everett’s filings do not establish a basis for federal subject
17 matter jurisdiction either on the basis of a federal question or on the basis of complete diversity of
18 citizenship and an amount in controversy in excess of \$75,000.

19 As to jurisdiction under 28 U.S.C. section 1332(a)(1), Everett’s petition indicates the
20 parties’ citizenships are not diverse.


21 As to jurisdiction under section 1331, Everett’s suggestion that he may be seeking to raise
22 defenses or counterclaims under federal anti-discrimination laws is insufficient to establish federal
23 subject matter jurisdiction. Jurisdiction under section 1331 requires that the civil action arise
24 under the constitution, laws, or treaties of the United States. A claim “arises under” federal law
25 only if the *complaint* alleges a cause of action based on federal law—“an actual or anticipated
26 defense” does not confer federal jurisdiction. *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009).
27 Thus, a defendant’s counterclaims and defenses asserting a federal question cannot give rise to
28 jurisdiction. *Id.*

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Therefore, the Court finds that Everett has failed to establish a basis for federal subject matter jurisdiction. The Clerk of the Court is directed to **REMAND** this action to the Superior Court for the County of San Francisco. The Clerk is directed to terminate all pending motions and close the file.

IT IS SO ORDERED.

Dated: March 2, 2020



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE